

CLERK'S COPY

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

1940

No. 970

43

THE UNITED STATES OF AMERICA, APPELLANT

vs.

WILLIAM L. HUTCHESON, GEORGE CASPER OTTENS,
JOHN A. CALLAHAN, AND JOSEPH AUGUST KLEIN

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MISSOURI

FILED APRIL 4, 1940

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1 [Citation in usual form showing service on Bryan Purteets filed April 1, 1940, omitted in printing.]

4 In United States District Court for the Eastern District of Missouri, Eastern Division

September Term, A. D. 1939

No. 21231

UNITED STATES OF AMERICA

v.

WILLIAM L. HUTCHESON, GEORGE CASPER OTTENS, JOHN A. CALLAHAN, AND JOSEPH AUGUST KLEIN

Indictment

Filed Nov. 3, 1939

UNITED STATES OF AMERICA,

Eastern Division of the Eastern Judicial District of Missouri, ss:

The Grand Jurors of the United States of America, duly empaneled, sworn, and charged in and for the Eastern Judicial District of Missouri, at the September Term thereof, A. D. 1939, and inquiring in and for said District, upon their oaths present and charge as follows:

1. William L. Hutcheson, George Casper Ottens, John A. Callahan, and Joseph August Klein are hereby indicted and made defendants herein.

2. The defendant William L. Hutcheson is a resident of Indiana and is general president of United Brotherhood of Carpenters and Joiners of America.

5 3. The defendant George Casper Ottens is a resident of Illinois and is a general representative of United Brotherhood of Carpenters and Joiners of America.

4. The defendant John A. Callahan is a resident of Missouri and was secretary of Carpenters' District Council of St. Louis until suspended from office on or about August 15, 1939.

5. The defendant Joseph August Klein is a resident of Missouri and is a business representative of Carpenters' District Council of St. Louis.

6. Except as otherwise specified herein the defendants held their respective offices aforesaid at all times during the formation and execution of the combination and conspiracy hereinafter set forth and until the finding of this indictment.

7. At all times during the formation and execution of said combination and conspiracy and until the finding of this indict-

ment, one M. A. Hutcheson and one S. P. Meadows were general vice presidents, and one Frank Duffy was general secretary of United Brotherhood of Carpenters and Joiners of America; one James C. Seymour was secretary of Missouri State Council of Carpenters; and one Walter E. Gebelein was a business representative of Carpenters District Council of St. Louis.

8. United Brotherhood of Carpenters and Joiners of America is a trade union of carpenters and other craftsmen including so-called millwrights, and has its headquarters and general office at Indianapolis, Indiana. Missouri State Council of Carpenters is a state council of United Brotherhood of Carpenters and Join-

6 ers of America, and has its headquarters and office at Jefferson City, Missouri. Carpenters' District Council of St. Louis is a district council of United Brotherhood of Carpenters and Joiners of America, comprising and representing nine local unions thereof in and about the City of St. Louis, Missouri, and has its headquarters and office at number 3606 Cozens Avenue, St. Louis, Missouri.

9. International Association of Machinists is a trade union of machinists, having its principal office and headquarters at Washington, District of Columbia. District No. 9 is a district organization of International Association of Machinists, comprising and representing the several local unions thereof in and about the City of St. Louis, Missouri.

10. United Brotherhood of Carpenters and Joiners of America and International Association of Machinists are and have been for many years affiliated with American Federation of Labor, a federation of trade and labor unions, having its principal office at Washington, District of Columbia.

11. Anheuser-Busch, Inc., is a corporation having its principal place of business in the City of St. Louis, Missouri, and branches in seventeen of the other principal cities of the United States. Anheuser-Busch, Inc., is engaged in the business of brewing beer, manufacturing ice-cream cabinets, and producing other articles and commodities of commerce. Anheuser-Busch, Inc., operates and has for many years operated a large brewery and manufacturing plant in the City of St. Louis, Missouri.

12. Anheuser-Busch, Inc., annually purchases and has for many years purchased large quantities of barley and barley malt in the States of California, North Dakota, Oregon, South Dakota, Washington, and Wisconsin, and in other places to the Grand Jurors unknown; and large quantities of rice in the States of Texas, Louisiana, Arkansas, and California, and in other places to the Grand Jurors unknown; and large quantities of hops in the States of California, Washington, and Oregon, in British Columbia, Czechoslovakia, Germany, and Jugoslavia,

and in other places to the Grand Jurors unknown. In the regular course of the business of Anheuser-Busch, Inc., such barley, barley malt, rice, and hops have been and are being continually shipped in interstate or foreign commerce, as the case may be, from the respective places of purchase to the brewery of Anheuser-Busch, Inc., at St. Louis, Missouri, where they are used in the brewing of beer, which is shipped for sale and sold and shipped by Anheuser-Busch, Inc., largely in interstate commerce, to sales agencies of Anheuser-Busch, Inc., and to independent wholesale and retail dealers in each of the States in the United States.

13. Anheuser-Busch, Inc., annually purchases, and has for many years purchased, large quantities of compressor units in the State of Ohio; large quantities of copper tubing in the States of Michigan and Ohio; large quantities of sheet copper and of cork in the State of Pennsylvania; large quantities of Cop-R-Loy tanks in the State of Illinois; and large quantities of valves, of grills, and of wire screens in the State of Michigan. In the regular course of the business of Anheuser-Busch, Inc., such compressor units, copper tubing, sheet copper, cork, Cop-R-Loy tanks,

8 valves, grills, and wire screens have been and are being continually shipped in interstate commerce from the respective places of purchase to the manufacturing plant of Anheuser-Busch, Inc., in the City of St. Louis, Missouri, where they are assembled with other articles and materials to the Grand Jurors unknown and manufactured into ice-cream cabinets which are shipped for sale and sold and shipped by Anheuser-Busch, Inc., largely in interstate commerce to sales agencies and dealers in all of the States of the United States.

14. Borsari Tank Corporation of America is a corporation having its principal place of business in the City and State of New York and is engaged in the business of constructing tank buildings in the States of New York, California, and Missouri, and other states to the Grand Jurors unknown.

15. In the years 1935, 1936, 1937, and 1938 Anheuser-Busch, Inc., anticipated for ensuing years such increases in the demand for its beer as to require expansion of the productive capacity of its St. Louis brewery by construction of additional buildings containing fermentation tanks. In each of those years Borsari Tank Corporation of America constructed such buildings for Anheuser-Busch, Inc., at its St. Louis brewery. In the construction of these buildings Borsari Tank Corporation of America used large quantities of materials shipped directly from places in other states to the brewery of Anheuser-Busch, Inc., in the City of St. Louis, Missouri, including among others the following: Lumber from Oregon, Washington, and Georgia; cement from

Indiana; brass fittings from New York and Wisconsin; structural steel from Illinois; refrigerating equipment from
 9 Pennsylvania; tile from Indiana and Illinois; and Ebon, a tank lining material made in Switzerland, from New York. In February 1939 Anheuser-Busch, Inc., anticipated for ensuing years such further increases in the demand for its beer as to require expansion of the productive capacity of its St. Louis brewery by construction of an additional tank building, and accordingly directed Borsari Tank Corporation to submit a proposal therefor. Borsari Tank Corporation of America proceeded to prepare and submit plans, specifications, and a proposal therefor, which Anheuser-Busch, Inc., approved in July 1939. The proposed construction was to cost approximately \$500,000 and was to be commenced not later than September 15, 1939. For the proposed construction the specifications required, and Borsari Tank Corporation of America contracted to purchase and intended to have shipped directly to the brewery of Anheuser-Busch, Inc., in the City of St. Louis, Missouri, large quantities of the same materials from the same states as in case of the aforementioned tank buildings..

16. Gaylord Container Corporation is a corporation maintaining its principal place of business in the City of St. Louis, Missouri, and branch offices and plants in the States of Texas, Louisiana, Florida, Georgia, South Carolina, New Jersey, and Wisconsin. Gaylord Container Corporation manufactures paper boxes, cardboard containers, and other articles and commodities of commerce, and makes substantial sales and shipments thereof in interstate commerce. Gaylord Container Corporation leases of
 10 Anheuser-Busch, Inc., and occupies land and buildings adjacent to the brewery and manufacturing plant of Anheuser-Busch, Inc., in the City of St. Louis, Missouri.

17. L. O. Stocker Company is a corporation engaged in the business of general building contractor; has its principal place of business in the City of St. Louis, Missouri; and also does business in the States of Oklahoma, Arkansas, Texas, and Illinois.

18. Gaylord Container Corporation made a contract on August 1, 1939, with L. O. Stocker Company to construct for Gaylord Container Corporation at a cost of approximately \$70,000 an additional office building on the premises leased by Gaylord Container Corporation from Anheuser-Busch, Inc. For this construction L. O. Stocker Company intended to use and contracted to purchase large quantities of structural steel and other building materials to be shipped directly to the building site in the city of St. Louis, Missouri, from places in the State of Illinois and other states to the Grand Jurors unknown.

19. Beginning so many years ago that the Grand Jurors are unable to fix the date, United Brotherhood of Carpenters and Joiners of America has been engaged, and it is still engaged, in a so-called jurisdictional dispute with International Association of Machinists. The matter in dispute has been and is a claim asserted by United Brotherhood of Carpenters and Joiners of America that millwrights in its membership are entitled to perform the work of erecting and dismantling machinery, to the exclusion of machinists in the membership of International Association of Machinists. United Brotherhood of Car-

11 penters and Joiners of America and its officers have called strikes at divers times and places for the sole purpose of enforcing its said jurisdictional claim as against International Association of Machinists and the members thereof. On October 24, 1932, the defendant William L. Hutcheson, as general president of United Brotherhood of Carpenters and Joiners of America, concluded and signed with A. O. Wharton, as international president of International Association of Machinists, a tentative written understanding between the two unions, to the effect that if any future dispute should arise over work claimed by both unions, which could not be settled locally, there should be no stoppage of work but the dispute should be submitted to the presidents of the two unions for adjustment. To this tentative understanding the two presidents signed and appended addenda wherein they mutually acknowledged the jurisdiction of United Brotherhood of Carpenters and Joiners of America to extend over "line shafting, pulleys and hangers, spouting and chutes, all conveyors, lifts and hoists, except that type of conveyor that is an integral part of the machine * * *;" and the jurisdiction of International Association of Machinists to extend over "the building, assembling, erecting, dismantling, and repairing of machinery in machine shops, buildings, factories, or elsewhere where machinery may be used." By letter dated April 14, 1933, and addressed to William Green, president of American Federation of Labor, the defendant William L. Hutcheson, as general president, and Frank Duffy, as general secretary, of United Brotherhood of Carpenters and Joiners of America, purported in

12 its name and behalf, to cancel and annul the tentative understanding of October 24, 1932. Thenceforth until the finding of this indictment United Brotherhood of Carpenters and Joiners of America has continued its jurisdictional dispute with International Association of Machinists, with the result that further jurisdictional strikes have ensued. Such strikes and disputes have imposed and are imposing a direct, unreasonable burden and restraint upon trade and commerce among the several states.

20. On June 28, 1939, Anheuser-Busch, Inc., had in its employ in its brewery and manufacturing plant in the City of St. Louis, Missouri, approximately two so-called millwrights, approximately sixteen maintenance carpenters, and approximately sixty cabinetmakers, all of whom were members of United Brotherhood of Carpenters and Joiners of America and of local unions comprised in and represented by Carpenters' District Council of St. Louis; and also approximately eighty machinists, all of whom were members of International Association of Machinists and of local unions comprised in and represented by District No. 9. On June 28, 1939, Anheuser-Busch, Inc., had a separate written agreement in force with each of the two unions, prescribing wage rates, hours of labor, and other terms and conditions of employment applicable to such members of the union as might be in the employ of Anheuser-Busch, Inc. The two agreements prescribed identical wage rates and substantially the same hours of labor for the members of both unions.

13 21. The agreement in force on June 28, 1939, between Anheuser-Busch, Inc., and International Association of Machinists and District No. 9, thereof bore no date but was made for the period from April 15, 1938, to April 15, 1939, and had been duly renewed and extended from April 15, 1939, to April 15, 1940. The agreement was the last of a continuous series of like agreements of which the first was made for the period from April 15, 1932, to April 15, 1933. The agreement in force on June 28, 1939, provided that machinists should do "the erecting, assembling, installing, and repairing of all metal machinery or parts thereof." The prior agreements in the series contained provisions to the same effect.

22. The agreement in force on June 28, 1939, between Anheuser-Busch, Inc., and United Brotherhood of Carpenters and Joiners of America and Carpenters' District Council of St. Louis was made and dated March 10, 1938, and was the last of a continuous series of like agreements, of which the first was made and dated October 24, 1933. Each agreement in the series provided that "the work to be done by the members of the Union under this contract shall be as, when, and where determined and designated by the employer." The agreement of March 10, 1938, also provided that any grievances thereunder failing of adjustment by conference between a shop steward of the union and the foreman or the employer should be submitted to arbitration, and that no employee should strike because of any grievance while the same remained undisposed of in the manner thus provided.

14 23. On divers occasions between October 24, 1933, and the finding of this indictment the defendants, Joseph August Klein, John A. Callahan, and George C. Ottens, purport-

ing to represent the Carpenters' District Council of St. Louis and United Brotherhood of Carpenters and Joiners of America, made demands upon Anheuser-Busch, Inc., to employ millwrights who were members of United Brotherhood of Carpenters and Joiners of America, instead of machinists, to perform various parts and all of the work of erecting, assembling, installing, and setting machinery in the St. Louis brewery and manufacturing plant of Anheuser-Busch, Inc. These demands did not in any way relate to the wage rates, hours of labor, or working conditions applicable to members of United Brotherhood of Carpenters and Joiner of America in the employ of Anheuser-Busch, Inc., but involved only the claim that millwrights who were members of United Brotherhood of Carpenters and Joiners of America had exclusive jurisdiction over and the exclusive right to perform the work of erecting, assembling, installing, and setting machinery.

24. Within three years next before the finding of this indictment, and within this Eastern Division of the Eastern District of Missouri, the defendants William L. Hutcheson, George Casper Ottens, John A. Callahan, and Joseph August Klein, together with Walter E. Gebelein, James C. Seymour, S. P. Meadows, M. A. Hutcheson, and other co-conspirators whose names are to the Grand Jurors unknown, have knowingly, wilfully and unlawfully engaged in a combination and conspiracy in restraint of trade and commerce among the several states in violation of Section 1 of the Act of Congress of July 2, 1890, entitled, "An

15 Act to protect trade and commerce against unlawful restraints and monopolies" (26 Stat. 209), commonly known as the Sherman Antitrust Act; and especially in restraint of the flow into the State of Missouri from other states of materials used and intended to be used by Anheuser-Busch, Inc., for the brewing of beer and for the manufacture of ice-cream cabinets, and by Borsari Tank Corporation of America for the construction of tank buildings for Anheuser-Busch, Inc., and by L. O. Stocker Company for the construction of an additional office building for Gaylord Container Corporation; and also in restraint of the flow from the State of Missouri to other states of beer brewed by Anheuser-Busch, Inc., and of ice-cream cabinets manufactured by Anheuser-Busch, Inc.; and generally in restraint of the interstate trade and commerce of Anheuser-Busch, Inc., of Borsari Tank Corporation of America, of Gaylord Container Corporation, and of L. O. Stocker Company; and it was part of said combination and conspiracy that said restraints should be and were effected for an unlawful and

wrongful purpose by strikes, picketing, boycotts, and other means and methods, all of which are hereinafter more fully set forth.

25. On divers occasions beginning as early as the year 1937, the exact dates being to the Grand Jurors unknown, the defendants herein and their co-conspirators aforesaid did communicate with one another and did meet and confer together in the City of St. Louis, Missouri, and in other places to the Grand Jurors unknown, and through said communications and conferences did form and continue until the finding of this indictment their said

unlawful combination and conspiracy in restraint of trade
16 and commerce among the several states, which took effect in great part in the City of St. Louis, Missouri, as hereinafter more fully appears.

26. At all times during the formation and execution of their said combination and conspiracy the said defendants and their co-conspirators well knew that Anheuser-Busch, Inc., had had agreements continuously since the year 1932 with International Association of Machinists and District No. 9 thereof to employ members thereof to do the erecting, assembling, installing, and repairing of all metal machinery; and they well knew that Anheuser-Busch, Inc., had had agreements continuously since October 24, 1933, with United Brotherhood of Carpenters and Joiners of America and Carpenters' District Council of St. Louis that the work to be done by members thereof in the employ of Anheuser-Busch, Inc., should and would be as, when, and where determined and designated by Anheuser-Busch, Inc.; and after March 10, 1938, they well knew that the agreement of March 10, 1938, between Anheuser-Busch, Inc., and United Brotherhood of Carpenters and Joiners of America and Carpenters' District Council of St. Louis provided for arbitration of all grievances arising thereunder and prohibited all strikes on account of such grievances pending arbitration thereof.

27. Throughout the formation and execution of their said combination and conspiracy neither the defendants herein nor their coconspirators aforesaid were employees of Anheuser-Busch, Inc.; and no dispute existed between Anheuser-Busch, Inc., and the millwrights, carpenters, and cabinetmakers in its employ
17 concerning the terms and conditions of their employment or concerning any other legitimate objects for which such employees might organize and strike against their employer.

28. The defendants herein and their coconspirators aforesaid entered into said combination and conspiracy for the unlawful object and purpose of inducing and coercing Anheuser-Busch, Inc., to violate its said agreements with International Association

of Machinists and District No. 9 thereof, and to employ millwrights of United Brotherhood of Carpenters and Joiners of America, instead of machinists, to perform the work of erecting, assembling, installing, and setting all machinery. As part of their said combination and conspiracy, and in order to accomplish their said unlawful object and purpose, the defendants and their coconspirators determined and agreed among themselves by concerted use of their power and influence as officers respectively of United Brotherhood of Carpenters and Joiners of America, Missouri State Council of Carpenters, and Carpenters' District Council of St. Louis, to threaten, order, instigate, and promote strikes, picketing, boycotts, and other restraints of commerce among the several states, as hereinafter more fully set forth, without warrant or justification in law.

29. On and shortly before June 28, 1939, pursuant to said combination and conspiracy and in furtherance thereof, the defendants George Casper Ottens, John A. Callahan, and Joseph August Klein, by direction and with approval of the defendant William L. Hutcheson, communicated an ultimatum to Anheuser-Busch,

Inc., in the City of St. Louis, Missouri, that unless Anheuser-Busch, Inc., would agree by five o'clock P. M., on

June 28, 1939, to employ millwrights of United Brotherhood of Carpenters and Joiners of America exclusively for the work of erecting, assembling, installing, and setting machinery in the St. Louis brewery and manufacturing plant of Anheuser-Busch, Inc., then the said defendants would call a strike of said millwrights, carpenters, and cabinetmakers and would instigate a sympathy strike of all members of other unions affiliated with American Federation of Labor in the employ of Anheuser-Busch, Inc., and would prevent all members of United Brotherhood of Carpenters and Joiners of America and of other building trades unions affiliated with American Federation of Labor from working upon any construction being performed and about to be performed for Anheuser-Busch, Inc., by independent contractors, including the construction of the proposed tank building about to be performed by Borsari Tank Corporation of America.

30. Pursuant to said combination and conspiracy and in furtherance thereof, the defendants, well knowing that the said agreement of March 10, 1938, between Anheuser-Busch, Inc., and United Brotherhood of Carpenters and Joiners of America and Carpenters' District Council of St. Louis provided that all grievances thereunder must be submitted to arbitration, did unlawfully neglect and refuse to submit to arbitration the demand asserted in their said ultimatum, although often requested to arbitrate the same by Anheuser-Busch, Inc., and representatives

of International Association of Machinists and District No. 9 thereof.

31. Pursuant to said combination and conspiracy, and in furtherance thereof, the defendants George Casper Ottens, John A. Callahan, and Joseph August Klein, by direction and with approval of the defendant William L. Hutcheson, on June 28, 1939, in the City of St. Louis, Missouri, called a strike of the millwrights, carpenters, and cabinetmakers and attempted to instigate sympathy strikes of members of other unions, in the employ of Anheuser-Busch, Inc., and caused the premises of Anheuser-Busch, Inc., in the City of St. Louis, Missouri, and also the adjoining premises of Gaylord Container Corporation, to be picketed by persons bearing umbrellas and charging Anheuser-Busch, Inc., to be unfair to organized labor; all with intent to shut down the brewery and manufacturing plant of Anheuser-Busch, Inc., to hinder and prevent the passage of persons and property to and from said premises, and thus to restrain and stop the commerce of Anheuser-Busch, Inc., described in paragraphs 12 and 13 hereof, and to restrain the commerce of Gaylord Container Corporation, described in paragraph 16 hereof.

32. Pursuant to said combination and conspiracy, and in furtherance thereof, the said defendants and their coconspirators aforesaid also instigated, promoted, and brought about a boycott of beer brewed by Anheuser-Busch, Inc., and of dealers in said beer throughout the United States, by distributing printed circulars and sending letters to local unions, councils, and individual members of United Brotherhood of Carpenters and Joiners of America and of other trade and labor unions affiliated with American Federation of Labor and to members of the public at large in many of the states, and by publishing notices in "The Carpenter," an official periodical publication of United

20 Brotherhood of Carpenters and Joiners of America, circulated in all of the states of the United States, denouncing Anheuser-Busch, Inc., as unfair to organized labor and calling upon all union members and friends of organized labor to refrain from purchasing and drinking said beer, all with the intent and effect of restraining and stopping the commerce therein, described in paragraph 12 hereof.

33. Pursuant to said combination and conspiracy, and in furtherance thereof, the said defendants and their coconspirators aforesaid also refused to permit members of United Brotherhood of Carpenters and Joiners of America to be employed, and prevented such members from being employed, by Borsari Tank Corporation of America, with the intent and effect of preventing construction of the tank building about to be built by Borsari Tank Corporation of America for Anheuser-Busch, Inc., as de-

scribed in paragraph 15 hereof, and thus of restraining the commerce of Anheuser-Busch, Inc., in beer, described in paragraph 12 hereof; and also with knowledge and willful disregard of the consequent restraint and stoppage of commerce in the materials intended to be used by Borsari Tank Corporation of America for the construction of said tank building, as described in paragraph 15 hereof, and of the commerce of Borsari Tank Corporation of America in general.

34. Pursuant to said combination and conspiracy, and in furtherance thereof, the said defendants and their coconspirators aforesaid also refused to permit members of United Brotherhood of Carpenters and Joiners of America to be employed, and
21 prevented such members from being employed, by L. O. Stocker Company, with the intent and effect thereby of preventing the performance of its contract with Gaylord Container Corporation for the construction of an additional office building for Gaylord Container Corporation, as described in paragraph 18 hereof; and also with knowledge and willful disregard of the consequent restraint of the commerce of Gaylord Container Corporation, described in paragraph 16 hereof, and the consequent restraint and stoppage of commerce in the materials intended to be used by L. O. Stocker Company for the construction of said additional office building, as described in paragraph 18 hereof, and of the commerce of L. O. Stocker Company in general.

And so the Grand Jurors aforesaid, upon their oaths aforesaid, do find and present that the defendants herein and their coconspirators aforementioned, throughout the period aforesaid, at the places and in the manner and form aforesaid, knowingly, willfully, and unlawfully have engaged in a continuing combination and conspiracy in restraint of trade and commerce among the several states of the United States of America, with the intent and effect of restraining such commerce in the commodities and materials aforementioned and of imposing a direct and unreasonable burden thereon; that the said combination and conspiracy was formed, and each of the acts of the said defendants and their coconspirators in furtherance thereof was committed, not to obtain higher wages, shorters hours of labor, or any other legitimate object of a labor union, but only with the unlawful and
22 wrongful object and purpose of inducing and coercing an employer to violate a contract with one group of employees and to replace them with another group; and that the said combination and conspiracy, and each of the acts of the said defendants and their coconspirators aforementioned in furtherance thereof, has been in and of itself unwarranted, unreasonable, and

12 UNITED STATES VS. WILLIAM L. HUTCHESON ET AL.

oppressive, and against the peace and dignity of the United States of America, and contrary to the form of the statutes of the United States in such case made and provided.

ROSCOE T. STEFFEN,
WILLIAM M. MARVEL,
PAUL V. FORD,

Special Assistants to the Attorney General.

A true bill:

EDWARD T. NOLAND,
Foreman.

(File endorsement omitted.)

23 In United States District Court

Stipulation re filing of pleas and motions, etc.

Filed December 16, 1939

It is hereby stipulated and agreed by and between the attorneys for the Government and the attorneys for the defendants in the above entitled cause that all pleas and motions of all the defendants in this cause shall be filed with the District Clerk of the Eastern Division of the Eastern Judicial District of Missouri not later than Monday, January 15, 1940.

It is further stipulated and agreed by and between the attorneys for the Government and the attorneys for the defendants that argument on such pleas and motions as might be filed shall be had on February 16, 1940, the docket permitting. Should the docket not permit, it is further stipulated and agreed by the parties hereto that the Court shall be requested to hear said arguments on Friday, March 1, 1940.

ROSCOE T. STEFFEN,
Special Assistant to the Attorney General.

CHARLES H. TUTTLE,
J. O. CARSON,

Attorney for the Defendants.

MUNRO ROBERTS & BRYAN PURTEET,
Attorney for the Defendants.

By BRYAN PURTEET.

24

In United States District Court

Order as to filing of pleas and motions

Filed December 16, 1939

To the CLERK OF THE SAID COURT:

It is hereby ordered that Monday, January 15, 1940, shall be the last date for the filing of any pleas and motions by the defendants, in the cause of the United States vs. Hutcheson, et al.

And the attorneys for the defendants are hereby directed to file such pleas and motions as they desire not later than Monday, January 15, 1940.

(Signed) CHARLES B. DAVIS,
Judge, U. S. District Court.

Dated December 16, 1939.

25

In United States District Court

Appearances of counsel

December 21, 1939

Entry of appearance of Charles H. Tuttle, Esq., of the New York Bar; J. O. Carson, Esq., of the Indiana Bar; and Messrs. Grimm, Mueller & Roberts, Munro Roberts, and Bryan Purteet, Esq., as attorneys for defendants William L. Hutcheson, George Casper Ottens, John A. Calahan, and Joseph August Klein, filed.

26

In United States District Court

Separate demurrer of defendant William L. Hutcheson

Filed January 10, 1940

Comes now William L. Hutcheson, by his attorneys, and having heard the said indictment read says that the said indictment and the matters therein contained, in manner and form as the same are therein stated and set forth, are not sufficient at law, and that he, the said William L. Hutcheson, is not bound by the law of the land to answer the same and this he is ready to verify.

Defendant says that no crime against the laws of the United States is charged in the said indictment against this defendant.

The alleged indictment does not show facts sufficient to bring the same within the provisions of any statute of the United States of America.

The said indictment does not plead or allege any facts which constitute an offense against the laws of the United States.

The indictment as a whole alleges no facts nor acts which would constitute a violation of the laws of the United States.

27 The acts complained of therein do not in any manner violate Section 1 of Title 15 of the United States Code, popularly known as the Sherman Anti-Trust Act.

CHARLES H. TUTTLE.

Charles H. Tuttle.

MUNRO ROBERTS.

Munro Roberts.

J. O. CARSON, Sr.

J. O. Carson, Sr.

BRYAN PURTEET,

Bryan Purteet,

705 Olive St., St. Louis, Missouri.

28

In United States District Court

Separate demurrer of defendant George Casper Ottens

Filed January 10, 1940

Comes now George Casper Ottens, by his attorneys, and having heard the said indictment read says that the said indictment and the matters therein contained, in manner and form as the same are therein stated and set forth, are not sufficient at law, and that he, the said George Casper Ottens, is not bound by the law of the land to answer the same and this he is ready to verify.

Defendant says that no crime against the laws of the United States is charged in the said indictment against this defendant.

The alleged indictment does not show facts sufficient to bring the same within the provisions of any statute of the United States of America.

The said indictment does not plead or allege any facts which constitute an offense against the laws of the United States.

29

The indictment as a whole alleges no facts nor acts which would constitute a violation of the laws of the United States.

The acts complained of therein do not in any manner violate Section 1 of Title 15 of the United States Code, popularly known as the Sherman Anti-Trust Act.

CHARLES H. TUTTLE.

Charles H. Tuttle.

MUNRO ROBERTS.

Munro Roberts.

J. O. CARSON.

J. O. Carson, Sr.

BRYAN PURTEET,

Bryan Purteet,

705 Olive St., St. Louis, Missouri.

30

In United States District Court

Separate demurrer of defendant John A. Callahan

Filed January 10, 1940

Comes now John A. Callahan, by his attorneys, and having heard the said indictment read says that the said indictment and the matters therein contained, in manner and form as the same are therein stated and set forth, are not sufficient at law, and that he, the said John A. Callahan, is not bound by the law of the land to answer the same and this he is ready to verify.

Defendant says that no crime against the laws of the United States is charged in the said indictment against this defendant.

The alleged indictment does not show facts sufficient to bring the same within the provisions of any statute of the United States of America.

The said indictment does not plead or allege any facts which constitute an offense against the laws of the United States.

The indictment as a whole alleges no facts nor acts which would constitute a violation of the laws of the United States.

31

The acts complained of therein do not in any manner violate Section 1 of Title 15 of the United States code, popularly known as the Sherman Anti-Trust Act.

CHARLES H. TUTTLE.

Charles H. Tuttle.

MUNRO ROBERTS.

Munro Roberts.

J. O. CARSON, Sr.

J. O. Carson, Sr.

BRYAN PURTEET,

Bryan Purteet,

705 Olive St., St. Louis, Missouri.

32 In United States District Court

Separate demurrer of defendant Joseph August Klein

Filed January 10, 1940

Comes now Joseph August Klein, by his attorneys, and having heard the said indictment read says that the said indictment and the matters therein contained, in manner and form as the same are therein stated and set forth, are not sufficient at law, and that he, the said Joseph August Klein, is not bound by the law of the land to answer the same and this he is ready to verify.

Defendant says that no crime against the laws of the United States is charged in the said indictment against this indictment.

The alleged indictment does not show facts sufficient to bring the same within the provisions of any statute of the United States of America.

The said indictment does not plead or allege any facts which constitute an offense against the laws of the United States.

The indictment as a whole alleges no facts nor acts which would constitute a violation of the laws of the United States.

33 The acts complained of therein do not in any manner violate Section 1 of Title 15 of the United States Code, popularly known as the Sherman Anti-Trust Act.

CHARLES H. TUTTLE,

Charles H. Tuttle,

MUNRO ROBERTS,

Munro Roberts,

J. O. CARSON, Sr.,

J. O. Carson, Sr.,

BRYAN PURTEET,

Bryan Purteet,

705 Olive St., St. Louis, Missouri.

34 In United States District Court

Order for hearing

Filed January 19, 1940

Separate demurrers to the indictment in the above entitled case having been filed by counsel for each of the defendants and defense counsel having stipulated with the Attorneys for the United States that argument on said demurrers should be heard by this Court on February 16, 1940; the docket permitting, it is

therefore ordered by this Court on motion of the Attorneys for the United States that argument of said demurrers to the indictment in the above entitled case shall be heard on February 16, 1940.

(Signed) CHARLES B. DAVIS,
Judge—U. S. District Court.

35

In United States District Court

Record entry showing separate demurrers of defendants argued and submitted on briefs, etc.

February 16, 1940

This day comes the United States of America, appearing by Roscoe T. Steffen, Special Assistant to the Attorney General, and comes also the defendants, appearing in their own proper persons and by attorneys; and the separate demurrers of defendants, heretofore filed herein, to the indictment in this cause now coming on to be heard, and argued before and submitted to the Court on briefs to be hereafter presented.

36

In United States District Court

Memorandum of the court

(Filed March 29, 1940)

Four officers of the United Brotherhood of Carpenters and Joiners of America are indicted under the Sherman Anti-Trust Act, 15 U. S. C. A. 1, and are alleged to have conspired to restrain interstate commerce. The acts set out in the indictment were the outcome of a jurisdictional dispute at Anheuser-Busch, Inc., between defendants' union, which is affiliated with the American Federation of Labor, and the International Association of Machinists, also affiliated with the A. F. L. Defendants contended their members should be exclusively entitled to perform the work of erecting, repairing, and dismantling machinery that was being done by the Machinists.

The indictment alleges that defendants picketed or caused to be picketed the premises of Anheuser-Busch, Inc., and the premises of its tenant, Gaylord Container Corporation, the latter adjoining the premises of Anheuser-Busch, Inc.; that defendants refused to allow their members to be employed by Borsari Tank Corporation of America, which was about to construct a tank building for Anheuser-Busch, Inc.; that defendants refused to allow their members to be employed by L. O.

37

Stocker Company, which had a contract to build an office building for Gaylord Container Company; and that defendants distributed circulars and letters and caused notices to be printed throughout the country in "The Carpenter", the official publication of defendants' union, denouncing Anheuser-Busch, Inc., as unfair to organized labor and calling upon all union members and friends of organized labor to refrain from purchasing and drinking beer brewed by that company.

Restraint of interstate commerce is alleged to have been attempted (1) through the publication of such circulars and notices throughout the country, intended to prevent the transportation of beer from Missouri to other states; (2) through what is alleged to be a "boycott" of the Borsari Company, which was prevented from shipping materials into Missouri from other states for the construction of the tank building; (3) through what is alleged to be a "boycott" of the Stocker Company, which was prevented from shipping materials into Missouri from other states for the construction of the office building for the Gaylord Container Corporation; and (4) through the picketing of the Anheuser-Busch plant and the premises of Gaylord Container Corporation, which was intended to cut off the manufacture and consequent shipping of beer and other products in interstate commerce by those companies.

Defendants have filed separate demurrers, which have been argued and briefed and are now for determination.

38 The definition of an unlawful conspiracy under the Sherman Act is given in *Duplex Printing Press Co. v. Deering*, 254 U. S. 443, 465:

"The accepted definition of a conspiracy is, a combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful by criminal or unlawful means."

This concept of a conspiracy, so far as this case is concerned, has been qualified by certain statutes.

The Clayton Act, 15 U. S. C. A. 17, provides that a labor organization, or the members thereof, shall not be held or construed to be an illegal combination or conspiracy in restraint of trade, under the anti trust laws.

The Norris-LaGuardia Act, 29 U. S. C. A. 105, prohibits any Court from issuing an injunction upon the ground that any person or persons participating in a labor dispute are engaged in an unlawful combination or conspiracy, because of the doing of certain acts.

In order to charge the defendants with the commission of a crime under the Sherman Act, the indictment must not only

allege sufficient facts to show a conspiracy to cause a direct restraint upon interstate commerce, as distinguished from a remote or incidental restraint (*Schechter Poultry Corporation v. United States*, 295 U. S. 495, 55 S. Ct. 37, 79 L. Ed. 1570; *Levering & Garrigues Company v. Morrin*, 289 U. S. 103, 53 S. Ct. 549, 77 L. Ed. 1062), but must also show that defendants' activities were unlawful, outside the scope of the legitimate objects and means that may be sought and employed by labor unions under the sanction of the Clayton Act (*Duplex Printing Press Co. v. Deering*, 254 U. S. 443, 65 L. Ed. 349).

39 Allegations in the indictment concerning the activities of defendants in picketing the premises of Anheuser-Busch, Inc., and Gaylord Container Corporation, as well as the refusal to allow their members to be employed by Borsari Tank Corporation and L. O. Stocker Company, fail to allege a conspiracy to directly restrain interstate commerce; the restraint on commerce shown by such allegations is only incidental. *Levering & Garrigues Company v. Morrin*, supra; *United Leather Workers v. Herkert & Meisel*, 265 U. S. 457; *Industrial Association v. United States*, 268 U. S. 64; *United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344; *Leader v. Apex Hosiery Company* (C. C. A., 3rd, 1939), 108 Fed. (2d) 71.

The real purpose of the defendants, as disclosed by the indictment, was not to restrain commerce, but to prevail in a local labor controversy. The Congress has not declared that a dispute of the nature alleged is unlawful. By the indictment it is sought to punish the defendants for what is conceived to be an unwarranted interference with a local industry, under the pretense that by the dispute interstate commerce was restrained. As the Supreme Court has said in *Levering & Garrigues Company v. Morrin*, supra, 1. c. 107:

• "Accepting the allegations of the bill at their full value, it results that the sole aim of the conspiracy was to halt or suppress local building operations as a means of compelling the employment of union labor, not for the purpose of affecting the sale or transit of materials in interstate commerce. Use of the materials was purely a local matter, and the suppression thereof the result of the pursuit of a purely local aim. Restraint of interstate commerce was not an object of the conspiracy. Prevention of the local use was in no sense a means adopted to effect such a restraint. It is this exclusively local aim, and not the fortuitous and incidental effect upon interstate commerce which gives character to the conspiracy."

40 Allegations pertaining to the publication throughout the country of notices in which a boycott of Anheuser-Busch

beer was requested, however, set forth an attempt to interfere with the interstate commerce in that product. It therefore becomes necessary to determine whether defendants employed any unlawful means or attempted an unlawful purpose in their latter activities.

The means used by defendants are not shown to be unlawful. Publication of notices that Anheuser-Busch was unfair to organized labor and requests to withdraw patronage from the products of that company was a direct boycott, lawfully carried out. No secondary boycott of customers purchasing the company's products is disclosed.

The Government contends, however, that the purpose behind defendants' acts was unlawful; and that a "jurisdictional strike" cannot be justified, however lawful the means. Counsel for the Government concede that jurisdictional strikes are permitted in some states, although a few states have outlawed them, generally by legislation.

Whatever rule may be adopted in the various states, labor unions engaging in jurisdictional strikes are immune from suit in the federal courts, so long as lawful means are employed, under the provisions of the Norris-LaGuardia Act of 1932, enlarging the scope of section 20 of the Clayton Act. *New Negro Alliance v. Sanitary Grocery Company*, 303 U. S. 552; *Lauf v. E. G. Schinner & Company*, 303 U. S. 323; *Blankenship v. Kurfman* (C. C. A. 7th, 1938), 96 Fed. (2d) 450; *Terrio v. S. N. Nielsen Construction Company* (D. C. La., 1939), 30 Fed. Supp. 77.

That the jurisdictional strike in the present case grows out of a "labor dispute" within the meaning of the Norris-LaGuardia Act is shown by section 13 of the Act (29 U. S. 41 C. A., sec. 113). In *New Negro Alliance v. Sanitary Grocery Company*, supra, the Act was held to cover a dispute between an organization interested in procuring employment for members of its race and an employer. As in the case under consideration, defendants' attempt was to require one class of persons to be employed in place of the class then employed. The Supreme Court found that the purpose of the Norris-LaGuardia Act is to legalize and sanction the use of peaceful persuasion in "labor disputes" within the terms of the Act (l. c. 562):

"The legislative history of the Act demonstrates that it was the purpose of the Congress further to extend the prohibitions of the Clayton Act respecting the exercise of jurisdiction by federal courts and to obviate the results of the judicial construction of that Act (referring to the *Duplex* case, supra, among others). *It was intended that peaceful and orderly dissemination of information by those defined as persons interested in a labor dispute*

concerning 'terms and conditions of employment' in an industry or a plant or a place of business *should be lawful*; that, short of fraud, breach of the peace, violence, or conduct otherwise unlawful, those having a direct or indirect interest in such terms and conditions of employment should be at liberty to advertise and disseminate facts and information with respect to terms and conditions of employment, and peacefully to persuade others to concur in their views respecting an employer's practices." [Italics supplied.]

In Duplex Printing Press Company v. Deering, supra, the Supreme Court had held that section 20 of the Clayton Act was intended to place certain restrictions upon the general operation of the anti-trust laws, as well as to restrict the right to injunctions. At that time the section was interpreted to apply only to disputes involving employers, employees, and persons seeking employment, and immunity was not extended to labor organizations or individuals not parties to the dispute. By the passage of the Norris-LaGuardia Act, such restriction in the scope of the

42 Clayton Act is no longer in force (New Negro Alliance v. Sanitary Grocery Company, supra), and protection is now extended to persons and organizations not immediate parties to the dispute.

The Court in the Duplex case stated at p. 471:

"Section 20 must be given full effect according to its terms as an expression of the purpose of Congress; but it must be borne in mind that the section imposes an exceptional and extraordinary restriction upon the equity powers of the courts of the United States, *and upon the general operation of the Anti-Trust Laws*—a restriction in the nature of a special immunity to a particular class, with corresponding detriment to the general public * * *." [Italics supplied.]

The decision of the District Court for the District of Columbia on March 26, 1940, in United States v. Drivers, Chauffeurs and Helpers Local Union No. 639, etc. (not yet reported), cannot be regarded as a precedent in this case. That action was under another section of the Sherman Act, the question of interstate commerce was not involved and the indictment alleged the use by defendants of threats, force, and violence, all of which are unlawful acts.

This is alleged to be a criminal case. The indictment should set forth facts which if proved would constitute a crime. That this indictment does not do. The tendency of legislation has been to countenance conduct such as that set out in the indictment, by providing that it does not give rise to even a civil action. This policy of the law inheres in all the relations between em-

ployer and employee. That which does not amount to a civil wrong can hardly be characterized as criminal.

The separate demurrers are sustained.

(Signed) CHARLES B. DAVIS,
United States District Judge.

43

In United States District Court

Order dismissing indictment

Filed April 1, 1940

Pursuant to opinion and judgment of this Court filed on March 29, 1940, sustaining separate demurrers and special pleas in bar to the indictment in the above entitled case, it is hereby ordered and adjudged that the indictment be this day dismissed as to all defendants.

(Signed) CHARLES B. DAVIS,
Judge, U. S. District Court.

Dated this 1 day of April 1940.

44

In United States District Court

Petition for appeal

Filed April 1, 1940

Comes now the United States of America, plaintiff herein, and states that on the 29th day of March 1940, demurrers and special pleas in bar interposed by the defendants William L. Hutcheson, George Casper Ottens, John A. Callahan, and Joseph August Klein to the indictment herein were by the Court sustained, and the plaintiff being aggrieved at the ruling of said District Court in sustaining said demurrers and special pleas in bar to the indictment, prays that it may be allowed to appeal to the Supreme Court of the United States for a reversal of said Judgment and Order sustaining said demurrers and special pleas in bar to said indictment, and that a transcript of the record in this cause duly authenticated by the Clerk of this Court be sent forthwith to the Supreme Court of the United States.

Petitioner submits and presents to the Court herewith a statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in this cause.

(Signed) ROSCOE T. STEFFEN,
Roscoe T. Steffen,
Special Assistant to the Attorney General.

Dated April 1st, 1940.

In United States District Court

Assignment of errors

Filed April 1, 1940

Now comes the United States of America, having heretofore filed its petition for appeal herein, and says that as a result of the action taken by this Court in sustaining the separate demurrers and special pleas in bar filed against the indictment in this cause by the defendants William L. Hutcheson, George Casper Ottens, John A. Callahan, and Joseph August Klein and in entering judgment thereon in favor of the said defendants on said demurrers and special pleas in bar, there has intervened manifest and prejudicial error to the prejudice of the United States of America in the above-entitled cause. The said errors so intervening are enumerated as follows, to wit:

1. The Court committed material error against the United States of America in sustaining the said demurrers and special pleas in bar of the said defendants.

2. The Court committed material error against the United States in dismissing the indictment.

3. The Court committed material error against the United States by failing to overrule the said demurrers and special pleas in bar.

4. The Court committed material error against the United States in sustaining the said demurrers and special pleas in bar on the ground that the activities of the defendants, described in the indictment, in picketing the premises of Anheuser-Busch, Inc., and of Gaylord Container Corporation with the intent and effect of preventing the said Anheuser-Busch, Inc., and of Gaylord Container Corporation from engaging in interstate commerce did not constitute a violation of the Sherman Act, c. 647, 26 Stat. 209; U. S. C., Tit. 15, Sec. 1.

5. The Court committed material error against the United States in sustaining the said demurrers and special pleas in bar on the ground that the activities of the defendants, described in the indictment, in refusing to permit members of the United Brotherhood of Carpenters and Joiners of America to work for L. O. Stocker Company with the intent and effect of preventing the transportation of building materials in interstate commerce into the State of Missouri by the said L. O. Stocker Company did not constitute a violation of Section 1 of the Sherman Act (c. 647, 26 Stat. 209; U. S. C., Tit. 15, Sec. 1).

6. The Court committed material error against the United States in sustaining the several demurrers and special pleas in

bar on the ground that the activities of the defendants, described in the indictment, in refusing to permit members of the United Brotherhood of Carpenters and Joiners of America to work for the Borsari Tank Corporation of America with the intent and effect of preventing the said Borsari Tank Corporation of America from transporting building materials in interstate commerce into the State of Missouri did not constitute a violation of Section 1 of the Sherman Act (c. 647, 26 Stat. 209; U. S. C., Tit. 15, Sec. 1).

7. The Court committed material error against the United States in sustaining the said several demurrers and special pleas in bar on the ground that the activities of the defendants, described in the indictment, in refusing to permit members of the United Brotherhood of Carpenters and Joiners of America to work for the Borsari Tank Corporation of America or the L. O. Stocker Company with the intent of restraining the Interstate commerce carried on by the said Anheuser-Busch, Inc., and
47 the said Gaylord Tank Corporation did not constitute a violation of Section 1 of the Sherman Act (c. 647, 26 Stat. 209; U. S. C., Title 15, Sec. 1).

8. The Court committed material error against the United States in sustaining the said demurrers and special pleas in bar on the ground that the activities of the defendants, described in the indictment, in conducting a systematic and nation-wide boycott of beer brewed by the said Anheuser-Busch, Inc., and of dealers in said beer with the intent and effect of restraining interstate commerce in the said beer, did not constitute a violation of Section 1 of the Sherman Act (c. 647, 26 Stat. 209; U. S. C., Tit. 15, Sec. 1).

9. The Court committed material error against the United States in sustaining the said several demurrers and special pleas in bar on the ground that because of the Norris-LaGuardia Act, c. 90, 47 Stat. 70; U. S. C., Tit. 29, Secs. 101-115, the activities of the defendants, described in the indictment, in conducting a systematic and nation-wide boycott of beer brewed by said Anheuser-Busch, Inc. and of dealers in said beer with the intent and effect of restraining interstate commerce in the said beer did not violate Section 1 of the Sherman Act (c. 647, 26 Stat. 209, U. S. C., Tit. 15, Sec. 1).

10. The Court committed material error against the United States in sustaining the said demurrers and special pleas in bar on the ground that the indictment does not charge the defendants with a conspiracy to directly restrain interstate commerce in violation of Section 1 of the Sherman Act (c. 647, 26 Stat. 209, U. S. C., Tit. 15, Sec. 1), as properly construed.

11. The Court committed material error against the United States in sustaining the said demurrers and special pleas in bar on the ground that under Section 1 of the Sherman Act (c. 647, 26 Stat. 209, U. S. C., Tit. 15, Sec. 1), when construed in
 48 the light of Section 6 of the Clayton Act (38 Stat. 731, Tit. 15, U. S. C., Sec. 17), and the Norris-LaGuardia Act (c. 90, 47 Stat. 70, U. S. C., Tit. 29, Secs. 101-115); the activities of the defendants described in the indictment were not carried on by illegal means and methods and were not intended to accomplish an unlawful purpose.

Wherefore, the United States of America respectfully prays that the action taken by said Court in sustaining the said demurrers and special pleas filed by the defendants and the ruling of the Court in entering judgment in favor of the defendants on said demurrers and special pleas be set aside and held for naught.

Respectfully submitted.

ROSCOE T. STEFFEN,

Roscoe T. Steffen,

Special Assistant to the Attorney General.

49

In United States District Court

Order allowing appeal to the Supreme Court of the United States

Filed April 1, 1940

This cause having come on this day before the Court on the petition of the United States of America, petitioner herein, praying for the allowance of an appeal to the Supreme Court of the United States for a reversal of the Order and Judgment herein dismissing the indictment as to all defendants and sustaining the demurrers and special pleas in bar interposed by the defendants William L. Hutcheson, George Casper Ottens, John A. Callahan, and Joseph August Klein to the indictment in said cause, and that a duly certified copy of the record of said cause be transmitted forthwith to the Clerk of the Supreme Court of the United States, and the Court having heard and considered said petition, together with petitioner's statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in said cause, the same having been duly filed with the Clerk of this Court, it is therefore, by the Court,

Ordered and adjudged, that the United States of America be and it is hereby allowed an appeal from the Order and Judgment of this Court sustaining the demurrers and special pleas in bar of the defendants to the indictment and dismissing the indict-

ment as to all defendants, to the Supreme Court of the United States, and that a duly certified copy of the record of said cause be transmitted forthwith to the Clerk of the Supreme Court and that a citation be issued as provided by law.

50 It is further ordered that the United States be and it is hereby permitted a period of twenty days from the date hereof in which to file and docket said appeal in the Supreme Court of the United States.

(Signed) CHARLES B. DAVIS,
District Judge.

Dated April 1, 1940.

51 In United States District Court

[Title omitted.]

Defendants' motion to amend orders of court

Filed April 16, 1940

Come now the defendants, by their attorneys, and inform the Court that there appears in the Court's order of April 1, 1940, sustaining separate demurrers, among other things the following:

"Pursuant to opinion and order of this Court on March 29, 1940, sustaining separate demurrers and special pleas in bar
* * *"

And there appeared in the order allowing appeal to the Supreme Court of the United States, filed April 1, 1940, the following:

"Ordered and Adjudged that the United States of America be and it is hereby allowed to appeal from the order and judgment of this Court sustaining the demurrers and special pleas in bar of the defendants to the indictment and dismissing the indictment as to all defendants."

Defendants say that there were no special pleas in bar filed in this case by any of the defendants and that therefore the foregoing phraseology is misleading and creates the inference

52 that the Court sustained special pleas in bar, when in truth and in fact there were no special pleas in bar in the case and consequently the Court did not sustain any special pleas in bar.

Wherefore, defendants pray that the Court amend its orders by striking out therefrom all reference to "and special pleas in bar."

BRYAN PURTEET,
Attorneys for Defendants.

Receipt of above motion to amend received this 16th day of April 1940, 2:10 P. M.

ROSCOE T. STEFFEN,
Attorney for the United States.

[File endorsement omitted.]

53

In United States District Court

[Title omitted.]

Order amending orders of Court

Filed April 16, 1940

The appellees-defendants herein having moved the Court to amend its order of April 1, 1940, sustaining separate demurrers to indictment and its order of April 1, 1940 allowing appeal, by striking out therefrom all reference to the words "and special pleas in bar," and the Court having duly considered the same

Doth find that no special pleas in bar were filed in this case except as the four papers denoted as separate demurrers of defendants may be so construed, and further declares that the Court made no ruling on whether such documents should be so construed, or not.

Wherefore, it is ordered, adjudged, and decreed that the foregoing orders be and they are hereby amended to eliminate any reference or mention of "special pleas in bar."

And it is further ordered that the Clerk prepare and transmit to the Supreme Court of the United States an additional or supplemental transcript showing appellees-defendants motion to amend and this order of the Court.

(Signed) CHARLES B. DAVIS,
Judge.

Dated 4-16-1940.

[File endorsement omitted.]

54

In United States District Court

Praecipe for transcript of record

Filed April 3, 1940

To the CLERK,

United States District Court,

Eastern District of Missouri, Eastern Division:

The appellant hereby directs that in preparing the Transcript of the Record in the above entitled cause for its appeal to the Supreme Court of the United States you include the following:

1. Docket entries and minute entries showing return of indictment, filing of demurrers and entry of Order and Judgment sustaining demurrers.

2. Indictment.

3. Stipulation.

4. Order for filing motions.

5. Order setting date of argument.

6. Demurrers.

7. Opinion.

8. Order and Judgment sustaining demurrers.

9. Petition for Appeal to the Supreme Court of the United States.

10. Statement of Jurisdiction of the Supreme Court of the United States.

11. Assignment of Errors.

12. Order Allowing Appeal.

13. Proof of Service on Appellees of Petition for Appeal, Order Allowing Appeal, Assignment of Errors and Statement as to Jurisdiction.

14. Citation.

15. Praecipe.

(S.) ROSCOE T. STEFFEN,
Roscoe T. Steffen,

Special Assistant to the Attorney General.

Dated April 3rd, 1940.

Service acknowledged.

(S.) BRYAN PURTEET,
Counsel for Defendants.

Dated April 3rd, 1940.

55 [Clerk's Certificate to foregoing transcript omitted
in printing.]

57 In Supreme Court of the United States

Statement of points and designation of record to be printed

Filed April 19, 1940

I

United States of America, appellant, states that in its brief and oral argument on its appeal in the above-entitled cause it will rely upon the points stated in its assignment of errors therein.

II

The entire record in this cause as filed in this Court is necessary for consideration of the points stated by appellant, and the entire transcript of record as transmitted by the Clerk of the District Court should be printed by the Clerk of this Court.

FRANCIS BIDDLE,
Solicitor General.

Service of the foregoing Statement of Points and Designation of Record to be Printed is hereby acknowledged this 9th day of April 1940.

CHARLES H. TUTTLE,
Counsel for Appellees.

[File endorsement omitted.]

[Endorsement on cover:] File No. 44277. E. Missouri, D. C. U. S. Term No. 870. The United States of America, Appellant vs. William L. Hutcheson, George Casper Ottens, John A. Callahan, and Joseph August Klein. Filed April 4, 1940. Term No. 870 O. T. 1939.